

§ 420.202

who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operation of the institution, organization, or agency.

Ownership interest means the possession of equity in the capital, the stock, or the profits of the disclosing entity.

Person with an ownership or control interest means a person or corporation that—

(1) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(2) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(3) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(4) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(5) Is an officer or director of a disclosing entity that is organized as a corporation; or

(6) Is a partner in a disclosing entity that is organized as a partnership.

Significant business transaction means any business transaction or series of transactions during any one fiscal year, the total of which exceeds the lesser of \$25,000 and 5 percent of the total operating expenses of the provider.

Subcontractor means—

(1) An individual, agency, or organization to which a disclosing entity has contracted or delegated some of its management functions or responsibilities of providing medical care to its patients; or

(2) An individual, agency, or organization with which an intermediary or carrier has entered into a contract, agreement, purchase order or lease (or leases of real property) to obtain space, supplies, equipment, or services provided under the Medicare agreement.

Wholly owned supplier means a supplier whose total ownership interest is held by a provider or by a person, per-

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sons, or other entity with an ownership or control interest in a provider.

[44 FR 41642, July 17, 1979, as amended at 57 FR 24982, June 12, 1992; 57 FR 27306, June 18, 1992; 57 FR 35760, Aug. 11, 1992]

§ 420.202 Determination of ownership or control percentages.

(a) *Indirect ownership interest.* The amount of indirect ownership interest is determined by multiplying the percentages of ownership in each entity. For example, if A owns 10 percent of the stock in a corporation that owns 80 percent of the disclosing entity, A's interest equates to an 8 percent indirect ownership interest in the disclosing entity and must be reported. Conversely, if B owns 80 percent of the stock of a corporation that owns 5 percent of the stock of the disclosing entity, B's interest equates to a 4 percent indirect ownership interest in the disclosing entity and need not be reported.

(b) *Person with an ownership or control interest.* In order to determine the percentage of ownership interest in any mortgage, deed of trust, note, or other obligation, the percentage of interest owned in obligation is multiplied by the percentage of the disclosing entity's assets used to secure the obligation. For example, if A owns 10 percent of a note secured by 60 percent of the provider's assets, A's interest in the provider's assets equates to 6 percent and must be reported. Conversely, if B owns 40 percent of a note secured by 10 percent of the provider's assets, B's interest in the provider's assets equates to 4 percent and need not be reported.

§ 420.203 Disclosure of hiring of intermediary's former employees.

A provider must notify the Secretary promptly if it, or its home office (in the case of a chain organization), employs or obtains the services of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity by an agency or organization which currently serves, or at any time during the preceding year, served as a Medicare fiscal intermediary or carrier for the provider. *Similar capacity* means the performance of essentially the same work

functions as those of a manager, accountant, or auditor even though the individual is not so designated by title.

§ 420.204 Principals convicted of a program-related crime.

(a) *Information required.* Prior to HCFA's acceptance of a provider agreement or issuance or reissuance of a supplier billing number, or at any time upon written request by HCFA, the provider or part B supplier must furnish HCFA with the identity of any person who:

(1) Has an ownership or control interest in the provider or part B supplier;

(2) Is an agent or managing employee of the provider or part B supplier; or

(3) Is a person identified in paragraph (a)(1) or (a)(2) of this section and has been convicted of, or was an owner of, had a controlling interest in, or was a managing employee of a corporation that has been convicted of a criminal offense, subjected to any civil monetary penalty, or excluded from the programs for any activities related to involvement in the Medicare, Medicaid, title V or title XX social services program, since the inception of those programs.

(b) *Refusal to enter into or renew agreement or to issue or reissue billing numbers.* HCFA may refuse to enter into or renew an agreement with a provider of services, or to issue or reissue a billing number to a part B supplier, if any person who has an ownership or control interest in the provider or supplier, or who is an agent or managing employee, has been convicted of a criminal offense or subjected to any civil penalty or sanction related to the involvement of that person in Medicare, Medicaid, title V or title XX social services programs. In making this decision, HCFA considers the facts and circumstances of the specific case, including the nature and severity of the crime, penalty or sanction and the extent to which it adversely affected beneficiaries and the programs involved. HCFA also considers whether it has been given reasonable assurance that the person will not commit any further criminal or civil offense against the programs.

(c) *Notification of Inspector General.* HCFA promptly notifies the Inspector General of the Department of the re-

ceipt of any application or request for participation, certification, re-certification, or for a billing number that identifies any person described in paragraph (a)(3) of this section and the action taken on that application or request.

[57 FR 27306, June 18, 1992]

§ 420.205 Disclosure by providers and part B suppliers of business transaction information.

A provider or part B supplier must submit to HCFA, within 35 days after the date of a written request, full and complete information on—

(a) The ownership of a subcontractor with which the provider or part B supplier has had, during the previous 12 months, business transactions in an aggregate amount in excess of \$25,000;

(b) Any significant business transactions between the provider or part B supplier and any wholly owned supplier or between the provider or part B supplier and any subcontractor, during the 5 year period ending on the date of the request;

(c) The names of managing employees of the subcontractors;

(d) The identity of any other entities to which payment may be made by Medicare, which a person with an ownership or control interest or a managing employee in the subcontractor has or has had an ownership or control interest in the 3-year period preceding disclosure; and

(e) Any penalties, assessments, or exclusions under sections 1128, 1128A and 1128B of the Act incurred by the subcontractor, its owners, managing employees or those with a controlling interest in the subcontract.

[57 FR 27306, June 18, 1992]

§ 420.206 Disclosure of persons having ownership, financial, or control interest.

(a) *Information that must be disclosed.* A disclosing entity must submit the following information in the manner specified in paragraph (b) of this section:

(1) The name and address of each person with an ownership or control interest in the entity or in any subcontractor in which the entity has direct or indirect ownership interest totaling